In the
Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-5933

IN RE JEROME P. TROY

BRIEF OF THE MASSACHUSETTS BAR ASSOCIATION IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Blanchard Press, Inc., Boston, Mass. — Law Printers

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Opinions Below

The opinion of the Court of Appeals for the First Circuit (App. B of Petition) is reported in 505 F.2d 746 (1974); opinion of the United States District Court for the District of Massachusetts is unreported (App. A of Petition); opinion of the Supreme Judicial Court of Massachusetts is reported in 1973 Massachusetts Advance Sheets 1107, 306 N.E. (2d) 203.

Jurisdiction

In filing this petition for a writ of certiorari petitioners have involved the jurisdiction of this Court under Title 28, U.S.C. Section 1254 (1).

Questions Presented

1. Whether the Courts below properly determined that the petitioner was afforded adequate notice and hearing before the Massachusetts Supreme Judicial Court to satisfy the due process guarantees of the Fourteenth Amendment to the United States Constitution.

2. Whether the state court determination that it possesses the authority to impose judicial and bar discipline is final and is not subject to review by the federal courts.

3. Whether the Courts below properly determined the evidence was sufficient to establish the want of fair, private and professional character to warrant his disbarment from membership in a federal court.

Constitutional Provision Involved

Fourteenth Amendment to the United States Constitution.

Statement

This matter is before this Court on an appeal of the decision of the Court of Appeals for the First Circuit affirming an order of the United States District Court for the District of Massachusetts disbarring the petitioner from the practice of law in that Court.

On September 30, 1971 a petition relating to the courtroom conduct of the petitioner, who was then the presiding justice of the Municipal Court of the Dorchester District, was filed with the Chief Justice of the District Courts of Massachusetts. At the conclusion of hearings conducted by the Grievance Committee of the District Courts, a report to the justices of the Supreme Judicial Court of Massa-

chusetts was submitted by the Chief Justice of the District Courts.

On the basis of this report, the Boston Bar Association filed a petition urging the Supreme Judicial Court to take appropriate action. The Boston Bar Association was subsequently authorized to undertake further investigations, and on November 2, 1972 the Boston Bar Association filed an Information urging the Court to take appropriate action in the public interest.

Subsequently, the scope of the inquiry was broadened to include investigation of non-judicial conduct involving personal and business activities, and on March 29, 1973 counsel appointed by the Court to conduct the proceedings filed an amended Information in substitution for the initial Information of the Boston Bar Association.

The hearings before the full bench of the Supreme Judicial Court were based solely upon the allegations contained in the amended Information.

On July 26, 1973 the Supreme Judicial Court entered an order disbarring the petitioner from the practice of law in the courts of the Commonwealth and enjoined him from exercising his duties as a judge.

Notice of the state disbarment order was brought to the attention of the District Court by the Massachusetts Bar Association. On March 22, 1974 the District Court entered an order temporarily suspending the petitioner from the practice of law and directed him to show cause why the suspension should not be made permanent. On April 5, 1974 the hearing was held by a three-judge panel of the District Court, and on June 28, 1974 an order was entered disbarring the petitioner.

On November 1, 1974 the Court of Appeals of the First Circuit, per curiam, affirmed.

Argument

I. The Petitioner Was Afforded Adequate Notice and Hearing Before the Supreme Judicial Court of Massachusetts To Satisfy Due Process Guarantees of the Fourteenth Amendment to the United States Constitution.

The petitioner asserts that the state proceeding was wanting in due process and alleges that he was not afforded prior notice that the allegations which formed the basis of the hearings might result in his disbarment, and therefore, under the principles enunciated by this Court in *Selling* v. *Radford*, 243 U.S. 46 (1916) the federal courts should not give recognition and effect to state judgment.

While an order of disbarment from a state court does not result in automatic disbarment from membership to the bar of a federal court, this court in *Selling* v. *Radford*, supra, has stated that it has the responsibility to give recognition and effect to the state judgment unless certain enumerated conditions were found to exist in the state procedure.

This Court in *Selling* v. *Radford*, supra, at p. 51 declared:

> "We should recognize the condition created by the judgment of the state court unless, from an intrinsic consideration of the record, one or all of the following conditions should appear: 1. That the state procedure from want to notice or opportunity to be heard was wanting in due process; 2. That there was such an infirmity of proof as to facts found to have established the want of fair, private and professional character as to give rise to a clear conviction on our part that we could not consistently with our duty accept as final the conclusion on that subject; or

> 3. That some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do."

It is clear that the facts contained in the record below totally refute the petitioner's contention of lack of notice. The Court of Appeals found upon an examination of the Information, pleadings and pre-trial motions that the petitioner had actual notice of the possibility of disbarment prior to the state hearing.

In its per curiam opinion, the Court of Appeals (App. B Petition, pp. 17-18) stated the facts apparent on the record demonstrated actual notice:

> "Not only was the proceeding initiated by the Bar Association, but the amicus curiae 'The People First' in the petition to intervene and the motion to present arguments and briefs as amicus, specifically sought disbarment and described the Bar Association petition as being based in part on its earlier letters to the bar requesting investigation and possible disbarment. Finally, in a pre-hearing motion to dismiss, filed by the appellant, the reasons stated in support of the motion included a claim that "the allegations of the amended petition, even if proven as true, would not warrant disbarment, suspension or censure. It is clear that the appellant was on notice as to the possible ramifications of an adverse finding. The District Court appropriately relied upon the state court procedure."

It is significant that the petitioner points to no evidence contrary to this finding.

Furthermore, the petitioner declares, as if to buttress his argument on alleged lack of notice, that he was only aware that he would face charges of judicial misconduct. Such is clearly not supported from the record and was rejected by the Court of Appeals (App. B Petition, pp. 16-17) which stated:

> "The charges were not of mere inattention to judicial responsibility. Aside from violation of the court rules and denial of the rights of defendants who had appeared before appellant, there were findings of gross abuse of the judicial process. The Information alleged and the Massachusetts court found that appellant had deliberately violated the terms of a license and that in testifying before the Superior Court on this matter he had purposefully misled the court. The Supreme Judicial Court found there had been purposeful alteration of court records in an effort to conceal evidence and that appellant had filed under penalty of perjury knowingly false answers to interrogatories. In finding this last fact the Massachusetts court rejected the testimony appellant gave as 'entirely incredible. We do not believe that there was any failure of memory. We find instead a deliberate, calculated, persistently repeated lie.' *In the Matter of Jerome Troy*, at 1141. It is unnecessary to go into the remainder of the court's findings. An attorney's obligation in such instances is clear. Disbarment based on such findings is well founded."

It is further submitted, and the courts below so ruled, that the petitioner was also on notice that he could be disbarred by virtue of an earlier opinion of the Supreme Judicial Court, *Matter of DeSaulnier*, 1972 Mass. Adv. Sh. 65, 279 N.E.2d 296, where the state court determined it

had the authority under the Massachusetts Constitution to discipline a judge in his capacity as a judge and as a lawyer.

It is apparent, therefore, that the petitioner is merely urging this court to pass upon a purely factual determination which has unanimously been decided contrary to the petitioner by both lower courts. Moreover, it is submitted that adequate notice, sufficient to satisfy due process guarantees was afforded the petitioner in that he was advised of the precise allegations against him and was afforded a fair opportunity to prepare and present a defense. *In Re Ruffalo,* 390 U.S. 544, 550 (1968); see also *In Re Oliver,* 333 U.S. 259 (1948).

II. The Evidence Clearly Established the Want of Fair Private and Professional Character.

The petitioner further contends there was insufficient evidence to warrant his disbarment due to the alleged lack of notice of that possible consequence. In that sense the issue is dependent entirely upon the merits of his claim regarding notice of possible disbarment which we suggest is totally untenable and contrary to the facts already determined by the lower federal courts.

The respondent submits the evidence of misconduct was clearly sufficient to warrant an order of disbarment. The District Court ruled on the sufficiency of the evidence and found that the review of the state court record establishes the findings of the state court are supported by substantial evidence. The Court of Appeals agreed and found that there was ample evidence to support disbarment. Furthermore, the Supreme Judicial Court in *Matter of Troy,* 1973 Mass. Adv. Sh. 1107, 306 N.E. 2d 203 (1973) outlined the grave findings and commented on the persuasiveness of the evidence at pp. 1164-1165:

"As shown in this opinion, most of the allegations of the Information have been proved. We add that as to those matters proved there were no difficult questions of fact for this court. As to every one of these matters there was clear, convincing and highly persuasive evidence.

"In reaching our ultimate decision in this case, we rely in major part upon the following six extremely serious charges which were proved before us against Judge Troy: (1) He lied under oath in answering interrogatories concerning his prior knowledge of his deceased wife's hypertensive heart condition. He repeated those lies before this court in the hearing of this case. He also lied to the Superior Court judge concerning the quality of fill used at Tenean Creek, and he repeated some of that false testimony at the hearing before this court. (2) He brought pressure to bear in an attempt to gain a political contribution from a lawyer who practiced in the Dorchester Court (Mr. Mooney), and he lied to this court concerning that matter. (3) He wilfully directed the filling of the Tenean Creek tidewater area in an illegal manner. (4) He neglected his judicial duties consistently and palpably, particularly during the period of about two years when he was engaged in practically a full-time pursuit of the Tenean Creek project. (5) Consistently, over a period of nearly two years, he used the services of Charles Critch as a bulldozer operator at Tenean Creek during regular court hours in which Critch's only remuneration was his pay as a court officer. (6) He procured substantial legal services from Mr. Manzi and Mr. Carvin. He paid these lawyers nothing for their services. Further, he gave them numerous assignments as court-appointed counsel for indigent

> defendants for which the two lawyers were compensated at public expense. During the time when Mr. Manzi and Mr. Carvin were serving as his personal attorneys, he presided over cases in which they appeared as counsel for private litigants, and he made no disclosure of the relationship between judge and counsel. On one occasion, without disclosing his relationship to counsel, he presided over a tort case and made a substantial finding in favor of a plaintiff represented by Mr. Carvin.
>
> "Any one of these six matters, standing alone, warrants severe disciplinary action against Judge Troy. Taken cumulatively, they clearly require the result we have reached."

It is clear that a review of the record and the evidence would reveal no infirmity or proof so as to persuade this Court that it should not accept as final the findings of the state court.

III. The State Court Determination That It Possesses the Authority To Impose Judicial and Bar Discipline Is Final and Binding Upon the Federal Courts.

The petitioner contends that he was disbarred in an unconstitutional hearing in that the state court had no power under the Massachusetts Constitution to remove him as a judge and that this constitutes "grave reason" as stated in *Selling* v. *Radford*, supra, why the state court disbarment should not be recognized in the federal courts.

This involves a question of purely state law which has been definitively decided by the highest court of Massachusetts. In *Matter of DeSaulnier*, 1971 Mass. Adv. Sh. 1345, 274 N.E.2d 454, the court first declared that, in the exercise of its inherent, statutory and constitutional au-

thority, it could impose discipline upon members of the bar either as lawyers or as judicial officers. In several subsequent opinions the decision was reaffirmed by the Massachusetts Supreme Judicial Court, *Matter of DeSaulnier*, 1972 Mass. Adv. Sh. 65, 279 N.F.2d 296; *Matter of Jerome P. Troy*, 1973 Mass. Adv. Sh. 1107, 306 N.E.2d 203.

It is submitted that petitioner presents no federal issue which this court should examine. The interpretation of the Massachusetts Constitution by the highest court of that state is binding upon this court. *In Re Murchison*, 349 U.S. 133 (1955); *State* v. *Sims*, 341 U.S. 22 (1950); *Lombardi* v. *Tauro*, 470 F.2d 798, *cert. den.* 412 U.S. 919 (1972).

IV. There Is No Conflict of Decisions and There Are No Important Questions of Federal Law Involved.

The decision of the Court of Appeals is not in conflict with any decision of this Court nor is there a conflict of decisions to be resolved. Indeed, the decisional guides have already been marked out by this Court in *Selling* v. *Radford*, supra, and remain for the proper application upon the facts by the lower federal courts.

The Court of Appeals did not decide an issue involving the application or construction of the United States Constitution which is contrary to the governing decisions of this Court.

Conclusion

For the foregoing reasons it is respectfully submitted that this petition for a writ of certiorari be denied.

Respectfully submitted,

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